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6 INTERNAL REVENUE SERVICE

7 NATURAL RESOURCES & CONSTRUCTION INDUSTRY

8 LMSB BUSINESS DIVISION

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11 IRC Section 29 Credit

12 Synthetic Fuel from a Coal Feedstock

13 An Explanation of the Compliance Process

14

15

16 Transcript of Proceedings

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Date: August 14, 2003

22

Time: 1:00 - 2:48 p.m.

23

Place: Leland Federal Building

24

Rooms 12M-12N

1919 Smith Street

25

Houston, Texas 77002

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1 aware of that.

2 Also, I need to make you aware of the fact
3 that we are transcribing this meeting.

4 And if there is, in fact, a reporter in
5 the room in our midst, I would like to ask that person
6 to identify him- or herself and possibly refrain from
7 asking any questions during the course of the meeting,
8 because there are a number of issues and processes that
9 we'd like to present; and we'd like to do that for the
10 benefit of those that are coming here primarily to hear
11 about those processes.

12 And we have a media relations expert or
13 specialist who will be happy to respond to any questions
14 or prepare a statement and give to any media person
15 that's here. So let us know if you're here and you're
16 desirous of a meeting with our public relations media
17 specialist.

18 This is, in fact, an open meeting and I'd
19 like to say that it's an open meeting and by that, I
20 mean that we have a number of different individuals that
21 have come here. We didn't ask you to sign in or
22 anything of that nature.

23 When we do have the question-and-answer
24 session, you're not required to identify yourself; but
25 if you'd like to identify yourself, your name and your

1 company, I will leave that strictly up to you. Again,
2 you're not required to identify yourself.

3 We will ask that you, too, hold your
4 questions until the end of the meeting and let the
5 various presenters get through their material. They
6 have quite a bit of material to cover, and hopefully the
7 material is of interest to all the parties. So we'd
8 like to get through that material about the various
9 processes.

10 We will not be talking about or discussing
11 policy and what I mean by that is we're not going to get
12 into any detail regarding the history of the private
13 letter ruling process nor do we intend to talk about any
14 kind of a qualifying criteria or criterion for, quote, a
15 chemical change or anything of that nature nor are we
16 going to engage in any kind of intellectual dialogue
17 about what legal interpretations may be associated with
18 this issue nor will we discuss any individual cases.

19 If someone has a need to talk about his or
20 her case, we're going to give you a contact point in the
21 event your case is currently not under examination. If
22 your case is under examination, we would ask that you
23 contact the affected case manager or team manager that
24 you're working with, again, if you would like to discuss
25 or have some discussion about the particulars associated

1 with your case.

2 Let me take a moment here to introduce the
3 members that are primarily going to be speakers, and
4 they represent the IRS.

5 And I'll start off with the individual to
6 my far left and his name is William "Bill" Davis and
7 Bill is a mining industry counsel.

8 The person to Bill's right, his name is
9 Don Snizek; and Don is the mining industry technical
10 adviser. He, too, will be making a presentation.

11 To my immediate right is the LMSB Natural
12 Resources Industry adviser, Doug Berg.

13 And to Doug's right is Rebecca Wolfe; and
14 Rebecca Wolfe is with LMSB counsel, area counsel, more
15 specifically here in Houston.

16 And to Rebecca's right is Paul Cordova,
17 and Paul is director of field operations for LMSB
18 Natural Resources.

19 Paul stood up. He felt the need to stand
20 up whereas the others didn't. I can't understand why
21 but --

22 Okay. With that in mind, with that
23 introduction having been completed, I'd like to turn the
24 microphone and podium over to Doug for some comments.

25 MR. BERG: Yes.

1 As Bobby said, I'm the senior industry
2 adviser. Briefly, my role is to advise Bobby on
3 industry issues. I don't get involved in specific
4 cases.

5 I want to speak a little bit about the
6 purpose of the meeting.

7 What we really want to do today is explain
8 large and midsize business' role in the Section 29
9 Syn-fuel issue, particularly our role with regard --
10 with regard to people who have private letter rulings or
11 pre-filing agreements.

12 Let me see if I can adjust this up a
13 little bit.

14 Of course, LMSB does not set policy or
15 determine the Government's legal positions. We're the
16 audit or examination function; and as such, we fill the
17 Government's fact-finding role in the process of
18 determining taxpayers' correct tax liabilities.

19 We don't issue PLR's. We don't suspend
20 their issuance nor do we revoke them. That's all left
21 up to chief counsel; but as will be explained more fully
22 by my colleague Bill Davis, our role is to verify on an
23 after-the-fact basis the controlling facts provided by
24 taxpayers in their private letter ruling submissions and
25 make sure that those submissions -- the information in

1 those submissions was correct.

2 Chief Counsel does not, of course, verify
3 that information prior to issuance but, instead,
4 conditions the rulings explicitly on the basis of the
5 information submitted and representations made by
6 taxpayers. It falls to our part of the organization to
7 verify the correctness of this information and these
8 representations. If the controlling facts cannot be
9 verified, we are charged with submitting a request for a
10 TEAM recommending revocation of the PLR at issue.

11 Generally speaking, the Section 29
12 Syn-fuel PLR submissions contain expert opinions to the
13 effect that based upon certain referenced test results,
14 the coal had undergone a significant chemical change.
15 In the verification process to date, we have not been
16 focusing on whether or not those expert opinions were
17 appropriately formulated given the information
18 submitted. Rather, we have thus far focused more
19 fundamentally upon the verification of the test results
20 underpinning those expert opinions.

21 Our experts, when conducting the same
22 tests according to generally accepted scientific
23 standards, have as yet been unable to replicate the test
24 results in the private letter ruling submissions. In my
25 personal opinion, it is this development that lead to

1 Announcement 2003-46, which suspended the issuance of
2 private letter rulings in this area.

3 Today we'd like to explain more fully the
4 Syn-fuel case audit process to you to explain what we
5 examine in the audit and what we do to confirm the test
6 results and the like. In the -- in addition, we'd like
7 to provide you some information about the PFA process.

8 As you probably know,
9 Announcement 2003-46, when it suspended private letter
10 rulings in this area, suggested that taxpayers who
11 wished certainty on this issue actually submit
12 themselves to the PFA process. In effect, this process
13 involves an examination which is really fairly similar
14 to what you might find on a post-filing basis in an
15 audit.

16 We'll be providing this information
17 through a presentation; but we, of course, want to give
18 you the opportunity to ask questions and to make
19 comments. We've set time aside for that after the
20 presentation. So we'd appreciate it if you could hold
21 your questions until the presentations are done.

22 With that, I'd like to turn it over to
23 Bill.

24 MR. DAVIS: Thank you, Doug.

25 My name is Bill Davis, and I'm the mining

1 industry counsel.

2 (The microphone was adjusted.)

3 MR. DAVIS: I'm Bill Davis, and I'm the
4 mining industry counsel. I'm part -- I'm in the large
5 and midsize business division of chief counsel; and I'm
6 located in the Denver, Colorado, office.

7 My role is to assist the mining industry
8 technical advisers with legal concerns that arise in
9 their -- in their function. Additionally, I assist
10 other Internal Revenue Service field counsel with issues
11 that relate to mining -- the mining industry.

12 The presentation has a number of different
13 parts. First, we'll repeat the ground rules. Next,
14 I'll touch on Announcement 2003-46. I'll discuss why
15 the Service is undertaking these examinations. And
16 we'll touch on the pre-filing agreement program
17 somewhat.

18 And that part -- Don Sniezek will pick up
19 that part and will further explain the
20 examination/pre-filing agreement process for the
21 Section 29 issue as we see it. Further, he'll go into
22 how the process concludes.

23 Then I will touch on, to some degree, what
24 is a Technical Expedited Advice Memorandum and that
25 process; and we'll conclude with a question session that

1 Bobby Scott will lead.

2 To reiterate, we won't be discussing any
3 individual cases here for obvious reasons. Likewise, we
4 can't get into any policy discussions here. Further, we
5 will not discuss any examination information, even if
6 it's not specific to a particular case.

7 Announcement 2003-46 was released late in
8 June of this year, and it arises from questions about
9 factual representations that the Service has seen in
10 Section 29 Syn-fuel cases. Specifically, the scientific
11 validity of test procedures and results are subject to
12 question.

13 The effect of this announcement is that
14 during the review, the private letter ruling process is
15 suspended. The announcement does state, though, that
16 for those taxpayers who have not submitted private
17 letter ruling requests that the presubmission conference
18 process that's outlined in Revenue Procedure 2003-1 is
19 still available for them to go in and discuss that with
20 the (unintelligible) office. Further, for taxpayers who
21 want certainty with regard to their test -- the validity
22 of their test procedures and the results, pre-filing
23 agreement requests may be used if a taxpayer has a
24 private letter ruling.

25 Why is the Service examining this issue

1 where there's already a private letter ruling?

2 Well, this is taken directly from Revenue
3 Procedure 2003-1. There in Section 12.03, it states
4 that: When determining a taxpayer's liability, the
5 field office must ascertain whether, first, the
6 conclusions that are stated in the letter ruling are
7 properly reflected in the taxpayer's return; next, that
8 the representations upon which the letter ruling is
9 based -- was based reflect an accurate statement of the
10 controlling facts upon which the ruling was based; next,
11 the transaction -- that the transaction was carried out
12 substantially as proposed; and, finally, whether there
13 have been any changes in the law that apply to the
14 period during which the transaction or continuing series
15 of transactions were consummated.

16 A further explanation is that we -- as far
17 as checking the controlling facts, the Service is
18 interested in checking those facts as of the time that
19 the private letter ruling submission was tendered to the
20 Service; and we also may want to look at the -- or most
21 likely want to look at the controlling facts for the tax
22 year under consideration that's covered by that private
23 letter ruling.

24 What are the specific representations that
25 are being verified?

1 Well, many private letter rulings indicate
2 that the taxpayer has had experts conduct tests on the
3 fuel produced by the Syn-fuel process; and by a
4 preponderance of these test results, the taxpayer
5 represents that there is a significant chemical
6 difference between the product and the coal feedstock.
7 And it's the representations in this that we are looking
8 at.

9 Moreover, the private letter rulings do
10 not verify the claimed chemical change; and as Doug
11 stated earlier, they have been approved -- the national
12 office approved the process based upon the taxpayer's
13 submissions and the expert reports that accompanied
14 them.

15 Likewise, the private letter rulings do
16 not cover all of the issues that may arise in connection
17 with the Section 29 credit that's claimed. For example,
18 the taxpayers may have claimed that they met the
19 placed-in-service date that is required.

20 As you may know, Section 29 has a
21 requirement that any of the synthetic fuel facilities
22 that are producing a qualified fuel have to have been
23 placed in service prior to July 1st of 1998. This is an
24 area that the national office did not rule on in the
25 private letter rulings, and so this is an area that the

1 compliance people in the large and midsize business
2 division have to look into.

3 With that, I'll turn over the microphone
4 to Don Sniezek for risk analysis and further discussion.

5 MR. SNIEZEK: Thank you, Bill.

6 As you said, my name is Don Sniezek. I'm
7 the engineer technical adviser for the mining industry.

8 Part of my responsibilities include
9 advising our field agents on technical -- and providing
10 them technical guidance, providing them also with some
11 training, and ensuring that our compliance efforts are
12 maintained in a consistent fashion with all taxpayers
13 across the industry.

14 My presentation -- portion of the
15 presentation today is going to further describe why we
16 are looking at this issue, and then I will try to walk
17 you through some of the compliance procedures that you
18 can expect if you're under an examination or come in for
19 a pre-filing agreement request.

20 One of the additional items as to why we
21 are continuing to examine this issue is taken from a
22 risk analysis that all of our agents provide and
23 undertake on cases and as they evaluate each issue from
24 a business sense. Risk analysis is a subjective process
25 that compares the potential benefits to be derived from

1 an examination to the cost of resources needed to
2 conduct the examination. This process can be applied to
3 each potential issue or to the return as a whole.

4 And as I said, this is a subjective
5 process, not an objective process. It's not like the
6 agents are going out there, assigning numbers to each of
7 these issues, and appointing them, and then if it gets
8 to a certain level, it's flagged for examination. It's
9 more subjective than that.

10 There's a number of considerations that
11 the agents -- factors that the agents consider,
12 including the dollar amount, some compliance
13 considerations, the potential impact of future years;

14 and it all boils down to our resources as to whether or
15 not this is a smart business decision for us to proceed
16 on, dedicating a lot of personnel to any individual
17 issue. When you do the risk analysis on this issue,
18 Section 29 falls within the purview of a business
19 decision to take a look at it.

20 There are a couple of venues for the
21 review and examination of this issue. There's the
22 traditional post-filing examination of any issue where a
23 taxpayer will have claimed this issue; and if it -- if
24 the taxpayer is subsequently selected for audit, we will
25 go through the conventional post-audit review.

1 There is also, as mentioned by Bill in
2 Notice -- Announcement 2003-46, the availability of the
3 pre-filing agreement program, which is further outlined
4 in Revenue Procedure 2001-22.

5 And I'll touch on a little bit what the
6 pre-filing program is.

7 The pre-filing program and Revenue
8 Procedure 2001-22 permits an LMSB taxpayer -- and this a
9 large and midsize business taxpayer, having assets in
10 excess of \$10 million -- to request an inspection of
11 specific issues relating to the tax return before the
12 return is -- the return is timely filed; and this allows
13 us the ability to contemporaneously look at the issue
14 and hopefully increase the efficiency at which we can
15 conduct the review, because all the documents are
16 proffered at the beginning of the PFA program as opposed
17 to going through a post-examination filing where we may
18 be two or three years down the road from when the return
19 was filed and then trying to reconstruct or acquire
20 those documents for substantiation.

21 The pre-filing program is also available
22 to taxpayers who have claimed this issue in the past but
23 have not yet put it on a future return. So it's not --
24 it does not prevent taxpayers from coming in even though
25 they've claimed this issue on a prior year.

1 The results of a pre-filing program will
2 close with regard to -- and having a closing agreement
3 that will establish resolution and certainty for the
4 taxpayer on the issue. The pre-filing program also
5 allows the taxpayer or the Service at any time to
6 withdraw.

7 Okay. So how does the examination and
8 review process for the PFA work?

9 We'll walk you through some of the things
10 we're going to do.

11 The major qualifying requirements for the
12 Section 29 credit are: the binding contract
13 requirement, the placed-in-service requirement, the
14 chemical change requirement, the valuation on relocation
15 of any one of the Syn-fuel plants, and verification of
16 the computation.

17 And we touch on the chemical change aspect
18 of this issue in a few slides down the road.

19 Okay. How will the audit team proceed,
20 and what is required of the taxpayer?

21 Well, first off, this is a verification
22 process. The audit team is there to verify the facts
23 that were proffered in the taxpayer's PLR. So the
24 Service will verify the facts and determine if all of
25 the requirements of the Section 29 credit have been met.

1 How will the Service accomplish this
2 verification process?

3 The agents will request the taxpayer's PLR
4 filing submission. They will request all substantiating
5 documentation regarding some of the other major
6 components that I touched on in that prior slide as well
7 as requesting the credit computations to verify the
8 correctness of the computation of the credit.

9 IRS field personnel may also request a
10 site inspection to understand the taxpayer's synthetic
11 fuel operations and secure ASTM quality samples for
12 independent testing to verify the claimed significant
13 chemical changes.

14 "ASTM" here refers to the American Society
15 of Testing and Materials. These are standards that are
16 used to collect samples that will have, then, the
17 integrity necessary for independent testing.

18 Once these samples are collected, outside
19 independent Service experts will review the taxpayer's
20 reports and use the same tests; primarily, Fourier
21 transform infrared, FTIR, and thermo gravimetric
22 analysis, TGA, as well as proximate analysis, using
23 scientifically accepted and recognized protocols in an
24 effort to replicate the taxpayer's claimed results and
25 those proffered in its PLR.

1 Now, what do we mean by "scientifically
2 accepted and recognized protocol"?

3 Typically what we mean by this is
4 reproducibility. The cornerstone of the scientific
5 method is reproducibility, and it's the use -- I'm
6 sorry -- it's the -- it's the ability of an independent
7 laboratory to conduct the same tests on the sample,
8 using a standardized method, consistently applying this
9 standardized method, applying this method in a manner
10 which reduces the introduction of operator error and
11 bias in an effort to replicate the results. Also
12 inclusive of that is the retention of all raw data and
13 records of the methodology so that the method can be
14 reproduced.

15 If field personnel find the
16 representations upon which the taxpayer's ruling was
17 based do not reflect an accurate statement of the
18 controlling facts, then the Service should proceed with
19 a Technical Expedited Advice Memorandum, or a TEAM
20 request, challenging the basis of the representations
21 made.

22 And Bill Davis will in a little bit
23 explain the TEAM process to you.

24 So how does the examination and compliance
25 process conclude?

1 There are a couple of different potential
2 outcomes.

3 If verification of all factual information
4 is determined, the issue will be closed with no change;
5 and the credit will be allowed.

6 Other non-PLR based issues, such as the
7 placed-in-service issue, may be developed, which could
8 then bring into question the allowance of the credit.

9 These are factual issues that weren't
10 addressed by the PLR. That's just an example of it.

11 Issues related to the PLR representations
12 may be developed, which could bring into question the
13 validity of the PLR and the claim for the credit. These
14 issues require this submission of a TEAM, a Technical
15 Expedited Advance (sic) Memorandum.

16 To explain the TEAM process, I'm going to
17 turn it back over to Bill Davis; and he'll give you a
18 rundown of what's expected from the TEAM.

19 MR. DAVIS: Thanks, Don.

20 The TEAM process is outlined in the
21 Revenue Procedure 2003-2. Again, it stands for
22 Technical Expedited Advice Memorandum.

23 It's a rather new thing for the Service.
24 Many of you may well be familiar with the technical
25 advice process, and that's also covered in that same

1 revenue procedure.

2 The TEAM is the vehicle for -- that is
3 specified by Revenue Procedure 2003-1 for seeking a
4 revocation of a private letter ruling, and the -- any
5 requests for a TEAM, for a technical expedited advice,
6 must have executive level review and approval.

7 This shows the seriousness -- seriousness
8 with which the Service treats the letter ruling process
9 and any attempts to revoke a standing private letter
10 ruling.

11 The revenue procedure outlines a number of
12 different deadlines and that sort of thing. As its name
13 suggests, the TEAM process is one that is somewhat
14 expedited compared to technical advice; and usually the
15 Technical Expedited Advice Memorandum is issued within
16 60 days of the submission of all of the documentation
17 that's required by both the Service and by the taxpayer.

18 If there are additional questions about
19 this process, I believe it would be appropriate to ask
20 them in the question period.

21 At this point, I'd like to turn this back
22 over to Bobby Scott.

23 MR. SCOTT: Thank you, Bill.

24 As I was sitting down there, I remembered
25 that I was a little bit presumptuous in assuming that

1 all of you knew me and knew my name.

2 So thanks, Bill, for introducing me, which

3 I failed to do up front.

4 We've gone through the PFA process and the

5 examination process and given you a bit of information

6 about both of those processes, and Doug has also related

7 to you some information.

8 So what we'd like to do at this juncture

9 is open it up for questions that you might have relative

10 to, again, these various processes and keeping in mind

11 the ground rules that we attempted to establish early

12 on; and that is that we would desire -- prefer not to

13 discuss any specific cases or entertain any questions

14 relative to your specific case situation.

15 But with that in mind, I'd like to open it

16 up for any questions you might have; and I would channel

17 that question to the appropriate person.

18 Yes, sir.

19 MR. WALLACE: Todd Wallace with Jones Day.

20 And I'm talking not only on behalf of some

21 of my clients but a number of -- a number of interested

22 taxpayers have gotten together and tried to make sure

23 that we can do this in an orderly fashion for you.

24 I wanted to start out by thanking you for

25 having us here today and emphasize to you that the group

1 of taxpayers you're dealing with here, I think you will
2 find to be very cooperative in this process.

3 This is not a case like some of the tax
4 shelters that get into the newspaper where taxpayers are
5 trying to hide something from the Service, playing the
6 audit lottery, trying to set things up in the hope --
7 technical arguments in the hope that they would work.

8 All the taxpayers who are involved in this
9 industry have gone through the private letter ruling
10 process and have tried very hard to go to the -- that go
11 to chief counsel's office to provide all the necessary
12 information, change our transaction structure and our
13 details when that's necessary, and are determined to try
14 to comply with all of the requirements of the law.

15 Our hope is that because this is a
16 critical issue for so many of these taxpayers that we'll
17 be able to work with you and your team to -- in a
18 cooperative way to get this dealt with on an expedited
19 basis. Obviously there are a great many taxpayers who
20 are affected here. We know there may be 20 or 30 audits
21 that have been opened very recently. It sounds like
22 it's going to be a big job to work through all those,
23 and we want to do everything we can to make that work
24 smoothly so we can get a quick resolution of this.

25 A couple of -- a couple of questions

1 focusing on the sampling process that was just
2 discussed.

3 The idea as we understand it is the
4 samples will be taken for purposes of verifying the
5 results in the test the taxpayers submitted with their
6 private letter ruling process, and we just want to
7 confirm one of the great concerns of the industry has
8 been that those sam -- that sampling is intended to
9 verify the results using the same tests the taxpayer put
10 forth in its private letter ruling and that there is not
11 an intention to examine other possible definitions of
12 chemical change or other tests that you think might be a
13 different way to demonstrate chemical change.

14 Is that correct?

15 MR. SCOTT: Don, would you like to respond
16 to that?

17 MR. SNIEZEK: We intend to use the same
18 tests, primarily FTIR and TGA, applied in scientifically
19 accepted methodology to confirm whether or not the
20 results can be replicated.

21 If the results cannot be replicated, then
22 we have asked our experts to tell us and explain why;
23 and we are deferring to our experts to tell us if they
24 can explain why these -- why we were not getting the
25 same results, if we don't get the same results.

1 So with regard to the tests that are being
2 done, yes, we will do the same test. If we replicate
3 the taxpayer's results, then there's no -- it's a moot
4 point. We will have done what we said we were going to
5 do is verify the results.

6 If we can't verify the results, then we're
7 going to try to determine why.

8 MR. WALLACE: And is that process of
9 establishing new, additional tests and trying to verify
10 why you're not getting replications, is that something
11 the taxpayer will participate in?

12 MR. SNIEZEK: I think the taxpayers will
13 be informed of the fact that we are trying to figure out
14 why we cannot replicate the tests, if, indeed, we cannot
15 replicate the tests.

16 MR. WALLACE: Another question on
17 replicating -- attempting to replicate the tests: It
18 would seem now -- we know there's been some audit
19 experience with samples being taken in several places
20 and outside experts being engaged by the IRS to look at
21 those samples, and one of the concerns of the group here
22 is being able to do that on an expedited basis.

23 Is it the intention that in all or most
24 audits there will be that kind of testing of new samples
25 taken at the taxpayer's site?

1 MR. SNIEZEK: I think a lot of it's going
2 to depend upon resources and the individual facts and
3 circumstances of every case. I'm not willing to say
4 that all taxpayers are the same, because we simply don't
5 know.

6 It will also depend upon our resources
7 with regard to funding for our experts, and I think all
8 of these are open questions depending upon the
9 individual facts and circumstances of the case.

10 MR. WALLACE: Okay. So in some cases, you
11 may be doing sampling; in other cases, you may not?

12 MR. SNIEZEK: Well, I guess I can't speak
13 to that. I guess it all depends upon the facts and
14 circumstances of the case.

15 MR. WALLACE: Okay. If you are going
16 to -- in talking about reproducibility of the tests, you
17 mentioned using scientifically accepted and recognized
18 protocols for the FTIR and TGA.

19 Yeah, you can go ahead and stand up.

20 It's evident that in some cases the
21 Service's experts may think that the tests ought to be
22 conducted according to some different protocol than the
23 taxpayers did.

24 Before these samples are taken, will the
25 Service identify for interest -- for the interest of the

1 taxpayer precisely what protocols are going to be
2 followed?

3 For example, the Service has asked
4 taxpayers to provide standard operating procedures
5 identifying the way that their laboratories conducted
6 the tests.

7 Will -- will you be willing to do the same
8 thing for taxpayers and tell us how you think the tests
9 ought to be done and how you're going to do that before
10 you take the samples and start in the process?

11 MR. SNIEZEK: The explanation of the
12 testing process is provided -- would be provided in any
13 report that would be offered by our experts if testing
14 were to occur. So that explanation will be in there if
15 we test.

16 MR. WALLACE: And that's presumably after
17 the process is over, but I guess what I'm asking is:
18 Can you tell us in advance what tests and protocols you
19 plan to follow for the verification process?

20 MR. SNIEZEK: Yeah. We're going to use
21 FTIR and TGA accordance -- in accordance with industry
22 accepted standards.

23 MR. WALLACE: Could we ask you for some
24 more details on that, on what -- what do you think are
25 the accepted standards --

1 (Participants speaking simultaneously.)

2 MR. SNIEZEK: I can elaborate on that.

3 For example, FTIR does have ASTM standards
4 attributed to it and you can look up the ASTM standards
5 for doing FTIR and you can read them.

6 MR. WALLACE: Would you like to identify
7 to us particular parts of the ASTM -- I mean, my
8 question is: There is a lot of variation in what's
9 allowed by ASTM. Different laboratories may do things
10 differently. I think taxpayers are concerned with
11 reproducibility and are concerned with being able to do
12 tests that make you people satisfied that we are getting
13 a significant chemical change.

14 So I guess we're interested in knowing to
15 some degree of detail exactly what tests you think are
16 appropriate to conduct here.

17 MR. SNIEZEK: FTIR and TGA.

18 MR. SCOTT: Well, if you're asking us if
19 we're willing to divulge to you our audit techniques or
20 what we are relying upon in terms of standards that
21 might be uniform or published, then there's no
22 prohibition against that. We will be gladly -- glad to
23 share with you whatever our audit techniques and our --
24 what we're relying upon.

25 MR. WALLACE: Okay. Very good.

1 Another question really has to do with
2 timing, which I know is a big issue for a lot of the
3 people in this room. As you may have heard, a number
4 of -- a number of these companies have suffered adverse
5 economic results from the issuance of the announcement
6 that's brought an issue that I think taxpayers are
7 frustrated with.

8 They know that the Service thinks
9 there may be some problem with their testing, but we
10 don't know what that problem is. And that's difficult
11 to explain to stock analysts.

12 I think one of the things -- and,
13 therefore, there's been -- most of the taxpayers here
14 have made fairly urgent requests to Treasury and to the
15 IRS -- I'm sure would repeat them to you -- that we'd
16 like a -- as quick a -- as expeditious a resolution of
17 these issues as we can get.

18 One of these questions has to do with the
19 sampling and testing. I think we can -- there have been
20 attempts already in which samples have been taken from
21 taxpayers and significant amounts of time have passed
22 and we don't have a final report. We don't know exactly
23 what the issues are.

24 There seem to be a lot of audits that have
25 been opened up in the last three or four months, and one

1 of the things taxpayers ask me is: How long will this
2 process take from the time that Service comes out to
3 take a sample until we know what you guys are thinking
4 and what kinds of results you're getting?

5 How quickly will we know that answer? Is
6 that a one-month process? (Inaudible) one-week
7 turnaround on their -- from their experts, is it a
8 one-month process? A one-week process? A six-month
9 process? What's the -- what can we expect there?

10 MR. SCOTT: I don't know that we can give
11 you any -- any time line with any degree of certainty,
12 because I'm sure you can appreciate that it takes a
13 certain amount of cooperation and responsiveness on the
14 part of the taxpayer for us to be able to move through
15 those audit processes expeditiously.

16 That's a fair question, though, in terms
17 of how long this might take; but that will vary to some
18 degree between taxpayers.

19 Again, I can't say for certain how long
20 it's going to take. I think we mentioned in 2003-46
21 that if a taxpayer is desirous of some kind of
22 certainty, they can come in for the pre-file agreement
23 process; and to some extent, the audit processes will
24 limit the scope of those examinations to maybe a
25 singular issue. That in and of itself will expedite the

1 entire audit process.

2 But outside of that kind of a
3 time-sensitivity comment, I don't know if I can give you
4 a specific certain time line.

5 MR. WALLACE: I'm trying to focus in a
6 little more narrowly just on the sampling process,
7 because while I understand that taxpayer response times
8 affect how an audit goes, in this particular case when
9 we're talking about sampling, someone goes out and the
10 IRS -- in the cases where I've been involved, the IRS
11 sends some observers out, samples are taken, they're
12 mailed off to -- mailed off to the laboratory that the
13 IRS specifies, and at that point everything is out of
14 the taxpayer's hands. The testing is going to be
15 conducted by the Service's expert.

16 A lot of us are worried: If there are --
17 if there are going to be 20 or 30 or 40 of these going
18 on at once, how quickly will the IRS' experts be able to
19 respond?

20 Because I know the outside experts the
21 taxpayers use, we beat on them. They get back to us
22 sometimes in a few days, but I know my experience in my
23 audits has been -- I have a couple of taxpayers who were
24 sampled in mid-April and who did not yet have a final
25 report.

1 So when they ask me, "What will it take?"

2 I think, "Well, will it take four months? Will it take
3 longer if there are 20 or 30 of these being conducted at
4 once?"

5 MR. SNIEZEK: I can -- I can give you an
6 estimate but only an estimate.

7 What we've found is we can expect
8 preliminary results about 60 days or so after sampling
9 and a final report maybe within 90 to 120 days
10 subsequent to that. So that's what we've heard.

11 MR. WALLACE: Will those preliminary
12 results be in some form that they will be shared with
13 the taxpayer, or is that just an internal communication?

14 MR. SNIEZEK: That would be internal
15 communication to us as to whether or not, I believe,
16 there was a verification process; and then there will be
17 the final drafting of the report 30 to 60 days after
18 that.

19 MR. WALLACE: So the taxpayer should
20 expect -- notwithstanding (unintelligible), the taxpayer
21 should expect 90 to 120 days from the date of sampling
22 before he hears back from you guys about the
23 verification process?

24 MR. SCOTT: Well, I think he's giving
25 you --

1 MR. SNIEZEK: I mean, I'm giving you --

2 MR. SCOTT: -- conjecture on his part.

3 MR. SNIEZEK: Right. I don't think -- I

4 think that those are, like, the outside limits on it. I

5 think it can probably be done within that time frame.

6 I'm not saying 90 days from the date of

7 sampling you're going to get a report. You could get it

8 before that.

9 MR. WALLACE: Is that -- should taxpayers

10 expect that -- do you feel you have the resources to

11 handle a lot of those requests in a relatively short

12 period of time, or are people going to have to stack up

13 like they did for private letter rulings?

14 MR. SNIEZEK: I don't know the answer to

15 that question just yet because we haven't gone through

16 the process. We'll have to see what we can do to try to

17 expedite it if we're going to test more than one case.

18 MR. WALLACE: Okay. And now if I can move

19 on, then, to what happens after that process.

20 The sampling and testing has been done.

21 The Service's experts have come back. We're 90 to 120

22 days into this, and they come back and say either

23 everything's okay or it's apparently they have -- say,

24 "No, we have not been able to verify that there was a

25 significant chemical change." The result of that, you

1 mentioned, is a report.

2 Will those reports generally be made
3 available to taxpayers? When you receive the final
4 report from your experts, will those be shared with the
5 taxpayer?

6 MR. SNIEZEK: Oh, yes.

7 MR. WALLACE: And what's the next step
8 after that?

9 Presumably the taxpayers may have some
10 comments on those reports, want to point out various
11 scientific points or authorities to you folks.

12 What's the process after one of those
13 reports gets in? Is there discussion with the audit
14 team or what?

15 MR. SNIEZEK: The process after the
16 reports -- they will be shared with the taxpayer, yes.

17 MR. WALLACE: Okay.

18 MR. SNIEZEK: And if the reports verify
19 the results, then subject to some of the other non-PLR
20 based issues, if the verification process, indeed, is
21 done, then the issue -- those were some of the potential
22 outcomes that I outlined in there.

23 If for some reason the results don't
24 replicate what was proffered in the PLR and what's
25 currently going on out in the field based on the tests,

1 then we get into a decision process where the field
2 is -- needs to consider and, I believe, is required to
3 submit a TEAM.

4 Is that not right, Bill?

5 MR. DAVIS: (Inaudible) risk analysis.

6 MR. SNIEZEK: Yeah, it's part of the risk
7 analysis procedure; but then we come into the TEAM
8 process.

9 MR. WALLACE: I guess the question is:
10 Will the taxpayer have an opportunity to make
11 presentations and provide information to the audit team
12 before you go ahead and head for a TEAM, or will you
13 head automatically for a TEAM if you get a negative
14 report?

15 MR. SNIEZEK: I think that the taxpayer
16 would be entitled to give us rebuttal to our positions.

17 MR. WALLACE: Okay.

18 MR. SNIEZEK: And we would consider those
19 as part of the decision-making process if a TEAM was
20 then going to be forwarded.

21 MR. WALLACE: Okay. And if you're still
22 concerned with there's not going to be -- you can't
23 demonstrate the results were being replicated, the
24 result will be a TEAM, then.

25 MR. SNIEZEK: If the -- if it turns out

1 that the field makes a determination that the facts
2 proffered -- that the controlling facts proffered in the
3 PLR weren't accurately represented as part of the
4 examination process, then, yes, a TEAM will be
5 initiated.

6 MR. WALLACE: Okay. Another question that
7 a number of people have asked -- they ask me all the
8 time -- is about the relative division of labor between
9 you folks and chief counsel's office, the people giving
10 rulings.

11 Obviously what you're doing right now has
12 an impact on the ruling process. That's presumably why
13 the announcement says they paused giving -- they've
14 paused on giving further rulings, and a lot of people
15 ask me: Are you folks -- are you folks in contact with
16 national office?

17 Is there -- are there any special
18 arrangements being made for coordination or flow of
19 information back and forth between the field and
20 national office on this? Do you talk to these guys
21 every day, or what's the -- what's the arrangement?

22 MR. SCOTT: That's some very expensive
23 talent and so we can't afford to talk to them every day,
24 but I would be -- I'd be less than candid if I said we
25 don't have dialogue with counsel.

1 We have our area field counsel that is
2 here today. They are involved with us and if there's a
3 need for us to engage in dialogue with chief counsel's
4 office, we do that, but you couldn't say that we are
5 conversant with them on a daily basis. No, I can't say
6 that.

7 MR. WALLACE: Okay. Is there --
8 presumably they're very interested in your results, as
9 the announcement indicates.

10 Are they -- is that something where your
11 results in particular cases will be forwarded on to them
12 as another data point or --

13 MR. SCOTT: In what context?

14 Forwarded to them --

15 MR. WALLACE: Saying whether to resume
16 issuing rulings, which I think concerns people.

17 MR. SCOTT: Well, I can't really speak to
18 what chief counsel's office might do. As 2003-46
19 indicates, our current posture relative to rulings,
20 we're just following through on the examination process;
21 and we get engaged with the pre-file agreement process.

22 If and when something might change or
23 transpire relative to private letter rulings, that
24 determination is outside of the context of this meeting
25 or my authority to say so.

1 MR. WALLACE: Okay. Another question that
2 a number of people have asked: It appears that the
3 industry generally, that most of the people who have
4 synthetic fuel plants, have been -- are subject to
5 audit; and a lot of audits have been opened up, even in
6 the last three or four months. Our understanding is
7 that there's an organized team out of West Virginia that
8 is handling a lot of these audits, though obviously not
9 all of them.

10 Why was -- why has the decision been made
11 to devote a lot of resources to putting everyone under
12 audit? Does that mean you know how the chemical change
13 tests are going to come out now?

14 MR. SCOTT: Well, first of all, I'm not
15 going to say that everyone is under audit. You have
16 some intelligence that we have centralized the process.
17 I think we've done that from an efficiency standpoint so
18 that to the extent that there is a need for us to
19 develop a degree of expertise about this particular
20 process and about our examination processes, we've done
21 that, invested that authority, in a certain territory.

22 Whether or not we -- we augment the
23 examination process or we engage with other
24 examinations, that will be determined as we identify a
25 need or identify additional returns that might, in fact,

1 have to be or would be subject to an examination; but
2 currently, no, I would not want to say that all
3 taxpayers are under examination. I really would prefer
4 not to speak to how many taxpayers are under
5 examination.

6 MR. WALLACE: Fair enough. Fair enough.
7 You don't have to speak to that, though I think we will,
8 because I think people within this group talk to each
9 other a lot about that.

10 I guess one of the questions here has to
11 do with the test -- with chemical change testing and the
12 additional testing by the IRS. It seems as if
13 shortly -- about the time that the pause in rulings was
14 first announced and about the time that the announcement
15 was issued that there was a sudden increase in the
16 number of people under audit.

17 It seems at the same time that we've been
18 told there are problems, but almost nobody in this room
19 that I'm aware of knows what those problems are with the
20 scientific testing.

21 It would seem that after you've heard back
22 from the IRS' expert, then the next step would be to
23 have some discussions with taxpayers about what is an
24 appropriate protocol to be conducted to try to reach
25 some agreement on what is the proper scientific method

1 and then after that, to apply that in other audits.

2 It seems that a bunch of audits, however,
3 have been opened fairly quickly; and the question is:
4 Are you going to wait for those audits until there's
5 been that kind of scientific debate and interchange with
6 taxpayers and until your process for sampling and
7 testing has been thoroughly tested, or are we going to
8 plunge ahead into audits before taxpayers have had an
9 opportunity to do that?

10 MR. SCOTT: Well, I think Don -- he
11 attempted to speak to part of your question about the
12 audit process and how it might evolve or unfold; but if
13 you're asking me specifically whether or not we are
14 going to initiate any other examinations prior to us
15 completing our review of the scientific process or -- is
16 that what you're asking me?

17 MR. WALLACE: In particular, whether the
18 testing is going to be a routine part of audits here at
19 this stage, whether you're going to go ahead and start
20 testing now, sort of before we've had that dialogue.

21 MR. SCOTT: Again, I think Don did speak
22 to whether or not there will be testing; and I really

23 can't say whether or not there will be testing in each
24 and every case and if there will be, to what extent
25 there will be testing.

1 But if there's a need for us to engage in
2 any kind of an audit process or verification process,
3 there's no problem whatsoever with us engaging in
4 dialogue with the taxpayers; and we -- I would think it
5 would behoove us to do so.

6 I hope that's responsive to your question.
7 If not, I'll get some amplification.

8 MR. SNIEZEK: There's another question in
9 the back, I think.

10 MR. SCOTT: Are you objectionable to me
11 responding to another question?

12 MR. WALLACE: Not at all. Go ahead.

13 MR. SCOTT: Okay. Someone was raising his
14 or her hand.

15 Yes, sir.

16 UNIDENTIFIED PARTICIPANT: If I have a
17 request for a private letter ruling that I'd like to

18 submit, I'm a little bit uncertain about whether or not
19 my expert's conclusions are going to be acceptable.

20 Can I use the PFA process in some manner
21 in order to make that determination before I submit the
22 ruling request?

23 MR. SCOTT: Well, if you have a process
24 that you -- again, you want certainty about or you would
25 like for us to look at, I think 2003-46 indicates that

1 we would -- we would review and/or accept and process
2 your pre-filing agreement to see if we can give you some
3 opinion or position relative to your process; and you
4 don't have to wait for anything. You can submit that
5 through their proper channels.

6 For example, if you are not involved in
7 any kind of an audit, you can contact my office; and
8 we'll put you in touch with the appropriate personnel to
9 submit a pre-file agreement. We will process that for
10 approval and then commence the inspection process for
11 our pre-file agreement.

12 UNIDENTIFIED PARTICIPANT: And how much
13 certainty do I have?

14 MR. SCOTT: How much certainty do you
15 have?

16 UNIDENTIFIED PARTICIPANT: Do I get a
17 closing agreement out of that pre-file --

18 MR. SCOTT: Yes. Yes. Most certainly.

19 All of our pre-file agreements result in
20 some kind of a closing agreement relative to that
21 particular issue or position.

22 UNIDENTIFIED PARTICIPANT: Which would
23 represent that the IRS has examined the specific
24 chemical change testing procedures and found them to be
25 appropriate and correct?

1 MR. SCOTT: Well, the closing agreement
2 and the pre-file agreement process would relate to your
3 process; and whether or not we agree with it will,
4 again, depend on facts and circumstances. We would
5 inspect the appropriate books and records, reports,
6 et cetera, and do all of the necessary steps and give
7 you a position. Whether or not it is a position that
8 you will embrace or concur with, the facts and
9 circumstances would dictate.

10 UNIDENTIFIED PARTICIPANT: Okay. Thank
11 you.

12 MR. SCOTT: Yes, sir.

13 UNIDENTIFIED PARTICIPANT: I'd like to
14 clarify something that Todd had said earlier.

15 My understanding is that if you've already
16 had your experts run their own set of tests and
17 procedures -- and along the lines of what Todd, I think,
18 was asking earlier was that -- listening to what was
19 said was that those same -- those procedures are the
20 same procedures that you're going to follow -- that your
21 experts will follow for every taxpayer.

22 Why doesn't -- could we actually have a
23 copy of whatever those detailed procedures are that your
24 experts are actually following?

25 In other words, why would we have to wait

1 until -- as Todd said, to actually submit a sample in
2 connection with an audit to actually see what those
3 procedures are? Why can't we just have a copy of those
4 today?

5 In other words, presumably they've been
6 written by your experts and followed by them in
7 connection with each audit.

8 MR. SNIEZEK: Well, first of all, it
9 presumes that every taxpayer right now is using the same
10 tests. I mean, we've only -- we're aware of these two
11 primary tests but I'm not sure that that's the case in
12 every case but it very may well be (sic).

13 With regard to the proper testing
14 methodology being employed, I think that -- that
15 information is out there already, honestly. If you want
16 to go out and look up what FTIR procedures are for
17 conducting this test, that's in the public domain right
18 now. I don't have the number off the top of my head,
19 but that's in the public domain right now.

20 UNIDENTIFIED PARTICIPANT: Yeah. But is
21 it -- am I correct in assuming that your experts have a
22 detailed, written report as to the procedures that they
23 follow?

24 Is that -- I mean, you've asked that of
25 the taxpayers.

1 Am I not -- am I correct in that?

2 MR. SNIEZEK: Right. And if the taxpayers
3 in individual examinations want to know what our experts
4 are doing on a case-by-case basis, then we will share
5 that information with them in the final report. It's
6 detailed in the final report.

7 UNIDENTIFIED PARTICIPANT: Maybe you're
8 not following my question.

9 Presumably you're following the same
10 procedures each time you do the FTIR and TGA; and if
11 there's a set of procedures, why not let us see them
12 today so that we can make sure we're following the
13 correct procedures?

14 MR. SCOTT: Well, let's make sure we
15 understand what we're saying or asking.

16 Don's talking about the procedures that we
17 will employ to conduct our examination or inspection.
18 He's also making reference to -- and I'm not an
19 engineer -- these FTIR -- Don, is that the correct
20 acronym?

21 MR. SNIEZEK: Right.

22 MR. SCOTT: He said that that's in the
23 public domain and that you have -- you currently have
24 access to that.

25 So you're -- if you're asking about our

1 audit techniques and steps or if you're asking about the
2 various standards that experts have to comply with or
3 processes have to be measured upon?

4 UNIDENTIFIED PARTICIPANT: Correct. It's
5 the latter, Bobby. My understanding is that there --
6 that taxpayers believe that they're -- that they have
7 disclosed the procedures that they are following.

8 If there is a disagreement, why can't we
9 see the procedures that the IRS' expert is employing?

10 In other words, presumably that's written
11 down somewhere; and that seems to me to be generic
12 information, not taxpayer-specific information.

13 MR. BERG: We'll check with our experts
14 and see if we can make that available. I guess our
15 general belief is that we don't think our experts are
16 using idiosyncratic procedures, that essentially they're
17 typical of independent analytical chemistry laboratories
18 that you'd find anywhere. So -- but we'll see if
19 there's any problem with that.

20 MR. SCOTT: I think there was a question
21 over here earlier on, and we never did give you an
22 opportunity. So -- yes, sir.

23 UNIDENTIFIED PARTICIPANT: Yes, Bobby. I
24 see you have a court reporter here.

25 Will we be able to get a transcript of

1 this meeting; and if so, how?

2 MR. SCOTT: Okay. I'm going to -- at the
3 bottom of your agenda is the name of "Cindy Ogden," my
4 staff assistant, along with her telephone number and
5 some other identifying information; and you can make a
6 request through Cindy.

7 In all candor, I have to check on the
8 procurement processes and all of the other legal
9 ramifications associated with us sharing this

10 transcript; but after I check that and if you have a
11 request in, then we'll respond to your request.

12 Anyone else who has a request, we'll
13 respond to your request.

14 UNIDENTIFIED PARTICIPANT: All right. You
15 also mentioned that you would give a contact name and
16 number for questions that taxpayers may have that are
17 not currently going through the PFA process.

18 MR. SCOTT: Yes.

19 That name that's at the bottom of your
20 agenda there, "Cindy Ogden," she is the contact person
21 I'd like for you to channel advance your questions or
22 issues to, again, if you're not currently under any kind
23 of an examination process. If you are, then please
24 direct your questions or concerns to your team manager
25 or case manager.

1 UNIDENTIFIED PARTICIPANT: And I know some
2 of us had submitted questions to you or to your group
3 prior to this meeting, in writing.

4 Do we expect that we could have those
5 answered in some returnable fashion, or do we need to
6 bring those up now?

7 MR. SCOTT: Well, we do have time for you
8 to surface questions now. However, if we don't get to
9 all the questions or if you'd like to submit additional
10 questions, again, I'd like for you to submit those to
11 Cindy.

12 UNIDENTIFIED PARTICIPANT: Okay. And just
13 one final thing: I did hear you clearly now -- you are
14 opening up the PFA process to people that have not
15 received PLR's?

16 MR. SCOTT: Yes, the PFA process is
17 currently open as indicated in 2003-46; and if you would
18 like to submit one, you can start that process today.

19 UNIDENTIFIED PARTICIPANT: Thank you.

20 MR. SCOTT: Yes, sir.

21 UNIDENTIFIED PARTICIPANT: You mentioned
22 that there were certain scientifically acceptable
23 methodologies that your scientists were employing.

24 Are they applying specific methodologies,
25 or would any generally acceptable scientific

1 methodologies be acceptable?

2 In other words, have your scientists come
3 up with what they consider to be the only set of
4 scientifically acceptable methodologies; or because
5 there can be differences of opinions among various
6 experts, is there some leeway such that even if they're
7 applying different standards and the taxpayer uses other
8 standards that are acceptable, their test would be
9 acceptable?

10 MR. SCOTT: Don't?

11 MR. DAVIS: I think that gets into the
12 specifics of examinations and I don't want to put you
13 off, but we can't, obviously, speak for our experts as
14 to what they think are the acceptable methods in every
15 case or if there is only one exclusive one. So we're
16 going to have to limit our answer to that.

17 MR. BERG: Can I just elaborate for a
18 minute?

19 Again, I think the key here is
20 reproducibility; and one way of putting it, I think,
21 would be to say that in order for competing methods to
22 be valid, they would all have to yield roughly the same
23 results. If they didn't, there's a problem, because
24 part of the scientific method is -- I mean, one of the
25 foundations of the scientific method is that anybody

1 should be able to run the same test on the same sample
2 and get the same results. Otherwise, the results aren't
3 valid. So that's partly how I would address your
4 question.

5 As far as -- I just wanted to emphasize
6 one thing again. We'll do our best to see if we can get
7 people the protocols that our experts are using. And we
8 do need their consent, although, again, I think, at
9 least in the case of FTIR, we're really talking about
10 something that's in the public domain; but it's in our
11 best interest and your best interest if we could put you
12 in a position where you can self-audit. That would
13 be -- that's really sort of an ideal situation. So
14 we'll do our best to get that out there.

15 UNIDENTIFIED PARTICIPANT: And assuming
16 you're able to do that, in what format could we expect
17 that; and how might we in the public be aware that you
18 made a decision to provide that information?

19 MR. BERG: We're trying to -- we're
20 working right now on some FAQ's that we're planning on
21 posting on the IRS website, and that might be one way of
22 doing it.

23 You know, we'll have to think about that.
24 We'll figure out a good way of getting them out there
25 but whether we do it, you know -- basically announce

1 that they're available in some fashion, let people
2 request them, or whatever but we'll -- you know, we'll
3 take that under consideration and we'll do that.

4 We might post them on the Web. I don't
5 know; but at this time, I can't give you too many, you
6 know, explicit answers about how we might get those
7 protocols to you since the question just really has
8 arisen.

9 UNIDENTIFIED PARTICIPANT: And if I also
10 could ask a question about the announcement and how that
11 relates to the PLR process.

12 It's my understanding that the
13 announcement has its genesis, at least in part, due to
14 concerns, perhaps discomfort, in Exam with respect to
15 the test procedures and processes, the test results that
16 the taxpayers had obtained.

17 Assuming that's the case, is there
18 something that Exam needs to see or something that Exam
19 might come across in its reviews that would get Exam
20 comfortable so that Exam might be able to give some
21 signals to the national office that its review is
22 complete, even if the audits themselves have not been
23 closed?

24 MR. SCOTT: I don't know -- that's
25 difficult to respond to.

1 You're asking if there's something the
2 examination team can review, verify, or inspect and give
3 comfort to the national office?

4 UNIDENTIFIED PARTICIPANT: Well, yeah.
5 I'm more so trying to figure out what it would take to
6 get Exam comfortable, because, again, at least it's my
7 assumption that there was something that made Exam
8 uncomfortable. Exam was not comfortable with the way
9 the taxpayers were running their tests or perhaps the
10 protocols being applied or just perhaps the results.
11 It's unclear to me.

12 And I'm wondering if there's something
13 that, you know, taxpayers can do to help LMSB and Exam
14 get over that discomfort.

15 MR. SCOTT: Again, I guess I'd have to
16 respond by saying that we would have to make that kind
17 of determination on each individual case. If there was
18 a basis for some kind of -- as you -- to use your word,
19 some kind of discomfort, then we'd have to look at each
20 case and decide what caused that degree of discomfort,
21 because the facts and circumstances might not
22 necessarily be the same.

23 I can't -- I don't know if I could respond
24 to that any better than that.

25 Do you have any --

1 MR. SNIEZEK: No.

2 UNIDENTIFIED PARTICIPANT: So I guess --
3 was I incorrect, then, in my initial assumption that
4 Exam had something to do with the announcement being
5 published in the first place?

6 MR. SCOTT: While I think Don attempted to
7 respond to that in his presentation where he was talking
8 about the announcement process and why we started the
9 announcement process, we could have him repeat what's in
10 his presentation to you.

11 MR. BERG: I guess I could say my personal
12 opinion.

13 Yeah, the announcement does arise out of
14 the fact that our experts have been unable to replicate
15 the results that taxpayers have had in their PLR
16 submissions.

17 UNIDENTIFIED PARTICIPANT: To follow up on
18 that, you said you can't replicate what taxpayers have
19 done in their PLR submissions; but you've also told us
20 that apparently you've used different standards,
21 testing, protocols, if nothing else because you've said
22 you've used scientifically accepted and there's some
23 suggestion that taxpayers did not. So there's a
24 difference.

25 Isn't the first question: If you use the

1 process or the test method used by the taxpayer, can you
2 replicate the taxpayer's results?

3 Then you can ask yourself, "Now, was that
4 scientifically acceptable; or did you fail to meet some
5 group of tests that you're going to disclose to us in
6 the near future?"

7 But replication doesn't seem to be the
8 question. It seems like you're not asking, "Can you
9 replicate our results with our approach?" but, "Can you
10 replicate our results with your approach?"

11 And, frankly, to say, "Oh, well, you'll
12 always get the same results," one of the real questions
13 here -- just to be technical beyond my own
14 understanding, but there's questions about this FTIR.

15 Well, the "T" in this is "transform,"
16 which has to do with taking your data and manipulating
17 it mathematically, not changing the raw data but
18 manipulating it mathematically, creating a transform;
19 and there are issues about what you -- what you
20 transform it around, a base number. If you're using one
21 base number and we're using another base number with the
22 same raw data, you won't end up with the same resulting
23 numbers; and one or the other might mask the
24 implications.

25 Now, to say that, therefore, with the same

1 raw data we had that you can't replicate our results is
2 to say, "If I divide everything by two so they get to be
3 numbers that will show up on my graph and you divide
4 everything by eight to get them to show up on your graph
5 and you say yours are different than mine," yes; but we
6 got the same results.

7 Now, we're not talking about replication.
8 We're talking about the validity and the scientific
9 validity and the scientific acceptance of the exact
10 processes, in some cases how you perform the test, in
11 some cases how you present the data from the test, and
12 in some cases the implications of the presentation of
13 that data; and when you laid those three out -- all
14 right -- you have very specific discussions of the sort
15 that all the tax lawyers in this room will have very
16 little input to. What they do have experience with is
17 bringing experts forward.

18 Now, we did have a meeting with some
19 people in Washington, including the chief counsel, as
20 you know, resulting in this meeting. The chief counsel
21 said that every expert is brilliant until he's
22 cross-examined, which is to say your experts, our
23 experts, great. Oh, they sound wonderful until someone
24 else with knowledge -- not us -- someone else with
25 knowledge says, "Well, what about this, Tom?" "What

1 about that, Bob?" And the next thing you know, they're
2 agreeing; but they're not where either one started.
3 They're somewhere in the middle.

4 Now, this is true for every person using
5 the FTIR. This set of issues is common to all the
6 taxpayers using FTIR, all the taxpayers using the
7 gravitational spectra --

8 (Sotto voce discussion.)

9 UNIDENTIFIED PARTICIPANT: -- TGA.

10 Thank you.

11 All right. When -- when -- you know,
12 that's not unique. You're not going to tell us that one
13 thing is scientifically acceptable for one taxpayer
14 within one test and something else for another one. You
15 wouldn't do that.

16 Well, we've all got that in common. We
17 ought to have a common dialogue. And what we're hoping

18 is that you'll give us what your standards are and
19 ultimately give us access to your experts, because we've
20 got to figure out -- we didn't do this willy-nilly.

21 Todd Wallace pointed out these taxpayers came in as open
22 as you can be with the IRS, said, "Congress gave us a
23 credit for something. We want to do it. What do we
24 have to do?"

25 We did everything we can do. We hired the

1 best coal testing experts. Not just general testers,
2 not just general FTIR testers, but the best coal experts
3 in the country. The only -- everyone you could find,
4 someone has hired and used them with all the same
5 results.

6 We can't tell what else we can do to go
7 any further. We have to find out what it is you're
8 worried about. And it's not whether we can replicate
9 what we do. It's whether what we did was scientifically
10 valid in your view, whether what you did is the only
11 scientifically valid test, and whether we can meet in
12 the middle somewhere and understand the
13 how-should-it-be-applied test.

14 MR. SCOTT: Okay. I'm taking away or
15 deducing from your comments that you are saying that we
16 should give you access to our standards and access to
17 our experts.

18 I hope that's a valid take-away.

19 UNIDENTIFIED PARTICIPANT: Yes. You've
20 done a better job of summarizing than I did.

21 MR. SCOTT: Duly noted; and if there are
22 any issues associated with that, we will so inform you.

23 Yes, sir. You've been trying to get a
24 question in for the longest.

25 UNIDENTIFIED PARTICIPANT: Hi, Mr. Scott.

1 MR. SCOTT: Yes, sir.

2 UNIDENTIFIED PARTICIPANT: I'd like to
3 know what specific actions short of a full-fledged PFA
4 that may take 60 or 90 days can be taken by taxpayers
5 who have private letter rulings pending but are not
6 under audit and where we're using different tax
7 protocols or testing protocols, using the FTIR and TGA
8 but using different protocols than the scientific
9 methods that are currently under review as we understand
10 them.

11 What can they do so as to be able to
12 expedite rulings, get those protocols approved, a faster
13 process than full-fledged PFA's?

14 MR. SCOTT: Well, I look to my counsel;
15 and she doesn't have a response.

16 The rulings that were in the process or in
17 the system, if you will, they have been suspended. To
18 the best of my knowledge, no other rulings are going to
19 be issued as indicated in the announcement that we've
20 alluded to a number of different times.

21 The only thing that I can relate to you
22 right now is that if you have a process that you'd like
23 for us to look at while this review process is ongoing,
24 then why don't you avail yourself of the pre-filing
25 agreement process, even if you've never submitted a

1 private letter ruling.

2 UNIDENTIFIED PARTICIPANT: Well, we have
3 submitted private letter rulings; but is there not a
4 procedure to be able to get the chemical change portion
5 of the PFA portion done for the limited basis of getting
6 a ruling if you're now locking the ruling process at the
7 national office and have you guys give them the okay to
8 start issuing rulings again?

9 MR. SCOTT: I don't know --

10 UNIDENTIFIED PARTICIPANT:
11 (Unintelligible) without explaining all the other stuff.

12 MR. SCOTT: I don't know that we can give
13 the okay to chief counsel to start issuing rulings
14 again. That's some determination or position or
15 decision they would have to make themselves.

16 But your question, your position, I will
17 make note of it; and if there is anything that will come
18 of that, if your comment or question precipitates a
19 change, we'll have to let you know.

20 UNIDENTIFIED PARTICIPANT: Thank you.

21 MR. SCOTT: Yes, sir.

22 UNIDENTIFIED PARTICIPANT: Mr. Scott, Don
23 previously made a statement that this information is in
24 the public domain; and there seems to be a disconnect
25 here, because if it was in the public domain, Don, we

1 wouldn't -- there wouldn't be a hundred of us here.

2 There seems to be a difference between --

3 we don't know what ASTM standard is being used. Whereas

4 there is ASTM standards relative to FTIR, there are many

5 different ASTM standards that can be used with FTIR.

6 And so we'd like to know -- and, Bobby,

7 you said that you would be happy to tell us what

8 standards you were using, and it would -- what would

9 really help us, would help this group more than anything

10 else would be for you to utilize the website and ask

11 your engineers what standards they used so that there is

12 no longer a disconnect so that we know what you're using

13 and have them -- you cannot just say "ASTM standard."

14 You have to tell us which number goes with that. There

15 are lots of them. Some apply. Some don't. Some are

16 quantitative. Some are qualitative.

17 So we can't tell and we're sitting here

18 not knowing and we have a whole industry that's on a

19 shutdown. A lot of jobs are at stake. People aren't

20 working because somebody isn't giving us the

21 information.

22 If you gave us that piece of information,

23 it might -- we may not agree with you or we may, but we

24 don't know. If you could do that for us on the Web

25 tomorrow, we could move a lot faster towards a

1 resolution of this issue.

2 Is that possible?

3 MR. SCOTT: I made the statement earlier

4 in trying to summarize what was -- the comments that

5 were emanating from the gentleman over here about your

6 desire to have access to the standards and also access

7 to our experts; and I think I did, in fact, agree that

8 we would take that under advisement. If there are no

9 issues associated with that, then we will do what we can

10 to make that happen.

11 If I said something more precise than

12 that, then I'll let the transcript -- let it prevail.

13 UNIDENTIFIED PARTICIPANT: All right. We

14 don't -- we wouldn't need -- down the road, we may want

15 access to your experts; but to start with, a small step

16 in that direction would just be telling us what number

17 of what standards you used. That would help us, and

18 then we could make decisions.

19 MR. SCOTT: Okay.

20 UNIDENTIFIED PARTICIPANT: Thank you.

21 MR. SCOTT: Thank you.

22 Todd. Yes, sir.

23 MR. WALLACE: Thanks.

24 Yeah, I think that's something that would

25 give people a lot of comfort. We appreciate your

1 willingness to do something like that.

2 Let me ask again just one more

3 process-oriented question that a couple of people have

4 forwarded on to me.

5 As we understand it, the process is going

6 to be we'll hear something from you folks, there will be

7 an opportunity to talk to the audit team, and if at the

8 end of that process the Service's field persons still

9 feel there is a problem that we're not demonstrating --

10 that we're not replicating results, that that will go up

11 on a TEAM. And I appreciate you pointing that out.

12 Could you give us just a little bit of

13 flavor on what taxpayer involvement is in the TEAM

14 process and what opportunities taxpayers will have for

15 input if that's the way we go?

16 MR. DAVIS: Sure.

17 The TEAM process is -- as I said before,

18 it's similar to the TAM (phonetic) process. It's just

19 that it has shorter deadlines. There's -- in the TEAM

20 process, there's actually a mandatory presubmission

21 conference that's called for. There are additional

22 information -- chances for additional information to be

23 gathered both by the -- or gathered and submitted both

24 by the Service and by the taxpayer.

25 The Service generally has its view of what

1 the facts are that it's submitting the TEAM on, and the
2 revenue procedure calls for a response from the taxpayer
3 if the taxpayer has some issue -- and in this case, most
4 likely it would -- with the Service's facts within ten
5 days.

6 MR. WALLACE: We would, I'm sure.

7 MR. DAVIS: Right. That's exactly right.

8 There's also an opportunity for a
9 conference of right in the TEAM process as there is in
10 the TAM (phonetic) process.

11 What I think is at the --

12 (Sotto voce discussion.)

13 Oh, and the conference of right would be
14 something that is held whether the national office
15 division that's ruling on the TEAM is ruling in favor of
16 the compliance team or ruling in favor of the taxpayer.
17 So that's something that's going to be there in every
18 case, it looks like.

19 And -- I'm trying to think.

20 Is there any other part that you'd need?

21 UNIDENTIFIED PARTICIPANT: If they rule --
22 if you have differing facts, they will rule on the law
23 as to both sets of facts. If A is true, then; if B is
24 true, then.

25 MR. DAVIS: I don't think that that's the

1 situation that's going to happen with a TEAM that's
2 going up to look at whether a private letter ruling
3 should be revoked or not.

4 UNIDENTIFIED PARTICIPANT: Well, doesn't
5 it come down to exactly what each of you have
6 identified?

7 I'm sorry. I'm not trying to be rude.

8 (The microphone was provided to the
9 speaker.)

10 UNIDENTIFIED PARTICIPANT: The key
11 question here is whether the processes that were --
12 underlay the initial submission of the private letter
13 ruling and that the taxpayers continued to use, often
14 for years, since that private letter ruling, whether
15 they constitute scientifically acceptable test
16 methodologies -- I'm trying to use Don's words, but I
17 think I've got it -- scientifically acceptable test
18 methodologies.

19 When the dust settles, there probably will
20 be no disagreement as to the underlying fact of our
21 expert punched something in a crucible, put something in
22 a computer, did this. That kind of evidence is clear.

23 Your evidence is just as clear. Your
24 person did something different, but you can state what
25 he did. I doubt we'll disagree.

1 You'll come down, however, to a conclusion
2 about, "Now, was this scientifically acceptable or not?"
3 And if yours is scientifically acceptable, well, that
4 actually won't quite matter.

5 If ours is scientifically acceptable and
6 we did what we said we did, I would think we'd get our
7 private letter ruling, that our private letter ruling
8 stands.

9 So if -- you may consider ours
10 scientifically unacceptable; but if that's your
11 statement of the facts and ours is acceptable, we'll end
12 up with a TEAM that splits.

13 MR. DAVIS: And I don't think that's going
14 to happen. Otherwise, it would be --

15 (Sotto voce discussion.)

16 MR. DAVIS: Right. The question that
17 we're looking at is whether there's any misstatements or
18 omissions of controlling facts or difference in the
19 controlling facts that we have.

20 So what the national office has to do is

21 determine what the controlling facts actually were, and
22 I don't think that you could have a situation where you
23 would have both a scientifically acceptable and a
24 scientifically unacceptable process with the same
25 process. That makes no sense. And it would make no

1 sense -- it would be -- it wouldn't do anything if the
2 national office issued two different opinions based upon
3 two different sets of facts.

4 I mean, then, you know, what happens is
5 that neither controls; and the Service would go and make
6 the adjustments. So that doesn't resolve anything.

7 I think what the Service -- what the
8 national office has to do in these TEAM's where we're
9 seeking revocation of the -- of a private letter ruling
10 is look to see if they agree or do not agree whether
11 there has been any omission or misstatement of the
12 controlling facts that were used to -- in the PLR
13 process in getting a private letter ruling.

14 UNIDENTIFIED PARTICIPANT: To drill down
15 on that just a little bit --

16 MR. DAVIS: Sure.

17 UNIDENTIFIED PARTICIPANT: -- if you
18 might --

19 MR. DAVIS: Sure.

20 UNIDENTIFIED PARTICIPANT: -- assuming
21 your taxpayers come in, what they have said is, "Here's
22 my expert from one of three or four well-known coal
23 testing labs. Here's my expert. The expert report says
24 I did FTIR." Maybe they have some details about how
25 they did it, you know. "I normalized to the ash peak,"

1 or something; but they put all that -- they put in some.
2 They go on and say my result. They talk about the
3 results, how the little lines have gaps in them; and
4 they say, "By a preponderance of this evidence, it
5 indicates to me that a chemical change has occurred."
6 All right? Based on that, we got a ruling three years
7 ago.

8 Now, your facts that you'll have found in
9 the field and you think we'll agree with are that if
10 that guy does the same test, he does get that result. I
11 mean, all of us -- most of us are good enough to tell
12 you this: Yes, sir, we've got to get the same results
13 with our own methods. All right?

14 But you will be saying, "Ah. You should
15 have followed a particular ASTM guideline, rule, or
16 procedure," or seven or eight of them -- I don't know --
17 or something like that, whatever it is. Ultimately
18 we'll be in there arguing about whether or not we told
19 you what our guy was going to do; he did it; he got the
20 results; in fact, now we can show you we got the
21 results; Exam agrees we got the results.

22 Now, did we fail to give you -- to have a
23 controlling fact be true because Exam, when doing a
24 different test, gets it done that other road?

25 And that's what you're going to come down

1 to, isn't it?

2 I mean, from everything you've ever -- you

3 know, you don't have to talk about any particular

4 taxpayer. That's why we're here.

5 (Sotto voce discussion.)

6 MR. DAVIS: Well, that -- yeah.

7 What has to be decided by national office

8 is whether all that is submitted with that private

9 letter ruling is verifiable and whether that was an

10 accurate statement of what the controlling facts are.

11 I don't -- and what was not done was that

12 there was not any judgment as to whether those facts

13 were accurate at the time that the letter ruling was

14 submitted. There was not anything, as far as I know,

15 that validated any test procedures. It took the

16 conclusion that the taxpayer put forth is that there was

17 a significant chemical change based upon the

18 preponderance of the evidence and accepted that as true

19 and now --

20 UNIDENTIFIED PARTICIPANT: The

21 Secretary -- the Assistant Secretary of the Treasury has

22 told us that that's not what taxpayers did was to agree

23 that -- in fact, taxpayers didn't come in and represent

24 that there was a significant chemical change. What they

25 did was represented and bring forth the fact -- the

1 facts of the test.

2 MR. DAVIS: Well, I guess -- I guess I
3 really can't speak to what the Secretary of Treasury
4 said and --

5 UNIDENTIFIED PARTICIPANT: Well, this is
6 just -- we are trying to figure out: Why are we in
7 controversy? That's what we're -- and this is very
8 helpful, what your discussion is. You're saying, "Well,
9 no, we think what you represented in the controlling
10 statement is that statement about chemical change as
11 opposed to our statement about what tests we ran and how
12 they came out."

13 If that's what you're telling us, then we
14 know what we need to focus on. We know what the TEAM is
15 about.

16 You know, the first issue is we're going
17 to be talking about what's -- not -- not -- you know, it
18 will be what's the controlling facts that -- you know,
19 that may not be true.

20 MR. DAVIS: And I think that that's true.
21 That's what's going to be focused on are: What are the
22 controlling facts?

23 MR. SCOTT: If you don't mind, I'll try
24 and get to each of you. We have about 30-plus minutes
25 left.

1 I think there's a lady in the back to the
2 left over here who's been trying to advance a question.

3 Yes, ma'am.

4 UNIDENTIFIED PARTICIPANT: I just wanted
5 to get clarity on a couple of things. One was I think
6 you've never actually audited for these specific
7 chemical change issues in the past, and this is the
8 first time -- I know PLR's have been -- have stopped
9 being issued in the past and then they've been reissued
10 and this kind of stop-and-start process has happened
11 before but never for this specific issue.

12 Is that correct?

13 MR. SCOTT: I'm not prepared to speak to
14 what audits have taken place in the past. I'm just
15 really not.

16 UNIDENTIFIED PARTICIPANT: And then can
17 you just clarify on the timing process for -- I guess
18 there was this 90- to 120-day process, I guess from the
19 moment that the field agents step onto the plant.

20 Can we just run through that time process
21 again?

22 You take a sample and it's like 90 to 120
23 days for you guys to get -- I guess the field agents to
24 get the test results from their scientists.

25 And then is there an additional timing for

1 the taxpayer to be notified? Is that that additional 30
2 to 60 days, or would the taxpayer be notified at the end
3 of that 120-day period?

4 MR. SCOTT: I'll see if I can get Don to
5 amplify what he said previously.

6 Will you be so kind?

7 MR. SNIEZEK: Sure.

8 We anticipate -- we anticipate hearing
9 from our experts with regard to any testing within 60
10 days preliminarily of what their potential results are
11 and getting a final report sometime, I'm going to guess,
12 90 days after samples are testing. Not to be held to
13 that, but I would assume that we could get that
14 information within that time frame.

15 That report will be then delivered to the
16 team coordinator in the case, the agents on the case, at
17 which time, then, they will incorporate that into the
18 rest of their fact-gathering and put together a final
19 determination as to whether or not there were -- whether
20 or not the facts have been verified one way or the
21 other.

22 At that time -- I mean, there's going to
23 be -- there's going to be a time lag between the time
24 that the revenue agent gets the report, compiles
25 everything together, and formulates his final

1 conclusion; but if at some time shortly thereafter he
2 makes his determinations, he will share them with the
3 taxpayer.

4 Does that clarify and answer your
5 question?

6 UNIDENTIFIED PARTICIPANT: So the taxpayer
7 could hear potentially within 90 days.

8 MR. SNIEZEK: No. No. We would have --
9 we would hope to have a final report from our expert, at
10 the outside, approximately 90 days. The revenue agent,
11 then, will then incorporate that into their other
12 fact-finding efforts that are going on with regard to
13 the examination of the issue. Okay?

14 Maybe placed in service. Maybe binding
15 contract. Maybe valuation on relocation. Maybe
16 partnership issues. Maybe verification of the
17 computation. This is only one component of the entire
18 examination.

19 At some point in time, they're going to
20 come to a conclusion as to whether or not all the facts
21 have been verified or whether or not they're going to
22 take issue with any particular aspect of the issue. At
23 that time, through the normal examination process, as we
24 always do, we share those findings then with the
25 taxpayer.

1 UNIDENTIFIED PARTICIPANT: Okay. And then
2 once -- if there is a determination that there's a
3 problem, then a TEAM, I guess, is initiated; and the
4 taxpayer then has ten days to respond to that, once
5 they've been notified of a -- that a TEAM --

6 MR. SNIEZEK: No. No, I'm not quite sure.
7 I'll let Bill -- I'll let Bill clarify the TEAM process.

8 MR. DAVIS: The TEAM process calls for
9 taxpayer involvement somewhat more than that, and that
10 ten-day period is simply the amount of time that the
11 revenue procedure gives the taxpayer to respond to the
12 facts as the Service sets them out. There's other --
13 there may be additional information that the national
14 office requires the parties to bring before it before
15 the TEAM is submitted for the national office to rule on
16 it. It's not -- it's that short of a period of time,
17 but that's just one of the different time frames.

18 Once everything is submitted to the
19 national office, it's supposed to get a response -- it's
20 supposed to get a decision out within 60 days.

21 UNIDENTIFIED PARTICIPANT: Okay. And then
22 just one last question on the -- this is on chemical
23 change, I guess just some clarity on what exactly is the
24 problem.

25 Is it the process that is being undergone,

1 is it the results, is it the reproducibility, or is it
2 the actual -- we had heard that the real problem was the
3 significant -- you know, chemical change versus
4 significant chemical change versus statistically
5 significant chemical change.

6 And is it that the results are not
7 reproducible or that they are not satisfactory to prove
8 significant or statistically significant, whatever the
9 IRS needs to approve the process? What exactly -- at
10 what point is there a problem?

11 And can you tell us what would constitute
12 significant -- how far away are -- you know, taxpayers
13 that you've seen, how far away are they from complying,
14 I guess?

15 MR. BERG: I guess the problem really is
16 simply that I have a hard time addressing the degree
17 issue here because we haven't really -- I guess my view
18 is that we're not looking for small differences but the
19 real issue here is simply that our experts cannot
20 replicate at all the results that we've seen to date and
21 our experts tell us that they are following accepted
22 methodology.

23 And, you know, I just refer back to Don's
24 comments that the expected -- or the accepted
25 methodology would have to be one that -- where people

1 would -- you know, different scientists would conduct
2 the same test and get roughly the same results. It
3 requires that there be consistent application of
4 methodology, standardized methodology, all that sort of
5 stuff. I mean, that's really the only way that I can
6 address that.

7 And then you would have, again, consistent
8 standards so that you're not introducing operator bias
9 into the process.

10 If you've got all that, you know, then in
11 theory you should be yielding the same results from
12 laboratory to laboratory.

13 That's really all I can say to address
14 your question.

15 UNIDENTIFIED PARTICIPANT: But are your
16 results showing any kind of significant chemical change?
17 Maybe the results are different, but are your results
18 showing a significant chemical change which would have
19 been acceptable if the taxpayer had done the test your
20 way and gotten the same result that you are getting?

21 MR. BERG: I'm not trying to be coy or
22 cagey here, but I think I'm running up against what I'm
23 allowed to say legally. So I really can't address that
24 question more. I wish I could, but I can't.

25 MR. SCOTT: I think this gentleman with

1 the -- in the center here.

2 UNIDENTIFIED PARTICIPANT: Mr. Scott, this
3 question may lighten the tone slightly.

4 But to the extent that it would be a good
5 thing and perceived by the Service as a good thing if it
6 were possible to extricate certain participants from the
7 larger group within this issue and the Service who are
8 at odds, and in conformity with the Deputy Secretary's
9 written comments about taxpayers' ability to demonstrate
10 eligibility should be nonburdensome, again for that
11 group of participants or taxpayers who have PLR
12 applications pending, the process of a pre-filing
13 agreement would be -- I think considered by the Service
14 as well -- as somewhat burdensome; and in the very
15 singular context of discussing the chemical change
16 testing procedures that taxpayer maybe would like to
17 proffer, I want to reemphasize that a meeting with Exam
18 might be a lot more streamlined and quick than the
19 actual PFA process to determine the approvability or
20 replicability of that taxpayer's procedures. So my
21 question is to the augmenting statement.

22 MR. SCOTT: Okay. Well, very well
23 articulated; but I don't know necessarily how the PFA
24 process is looked upon as being burdensome. And if you
25 would be desirous of having some discussion within audit

1 team or -- then by all means I would encourage you to do
2 that if you're currently engaged in an audit process.

3 If you are also submitting the possibility
4 of engaging in some discussion or dialogue with the
5 examination or LMSB if you're not currently under
6 examination, then to let that be known through the
7 central contact point that we have previously given you.

8 UNIDENTIFIED PARTICIPANT: Very well.

9 Thank you.

10 MR. SCOTT: Yes, sir.

11 I'm sorry. The gentleman there precedes
12 you, but I'll guarantee you that we'll get to you.

13 UNIDENTIFIED PARTICIPANT: During the
14 audit process, has the Service been focusing on chemical
15 change agents used in the various processes at all?

16 MR. BERG: Of course, we're aware that
17 people have changed agents and so on; and I guess I'll
18 give you sort of a generalized response to that, using
19 the risk assessment example.

20 If we're going to examine a case, although
21 there might initially be some question as to whether or
22 not a new agent would yield the same sort of test
23 results, I guess our view would be that if it yielded
24 the same test results, it wouldn't really be worth it to
25 us to pursue the issue, because one -- you know, in

1 going through a risk assessment process, one might
2 logically come to the conclusion that had that been
3 disclosed -- that different agent been substituted for
4 the one that was actually in the PLR submission and it
5 yielded those same results, one probably would have
6 gotten the PLR.

7 So, no, I wouldn't -- I wouldn't say that
8 we're focused on that other than there might be the
9 threshold question of whether that agent actually
10 yielded the same results; but once it was demonstrated
11 that it did, I don't think that would really be an issue
12 for us anymore.

13 UNIDENTIFIED PARTICIPANT: Thank you.

14 MR. SCOTT: Yes, sir.

15 UNIDENTIFIED PARTICIPANT: I don't mean to
16 push this too hard, but it sounds like IRS and IRS'
17 experts may not themselves know which ASTM standard it
18 is that is causing the problem.

19 Is that fair to say?

20 MR. SCOTT: Well, I can't speak to that
21 particular question. That's -- I think that that's your
22 perception whether or not we know what standards or what
23 we're looking at.

24 Perhaps you'd like to respond.

25 MR. BERG: I guess one thing I'd have to

1 say to that is that you have to realize that we -- there
2 are legal prohibitions against us talking about the
3 facts of individual cases. That's probably the best way
4 to address that.

5 MR. SCOTT: Todd.

6 MR. WALLACE: This is like being on the
7 OPRAH show.

8 Just one last question and comment about
9 process and particularly about what the people in
10 this -- on this side of the table in this room can do to
11 keep the people on this side of the table from going
12 crazy.

13 When we were talking a minute ago about
14 the timing question and that from the time of sampling
15 to the time the taxpayer gets the final report, probably
16 120 days -- by the way, Don, you haven't met that yet;
17 but I'm hoping you'll get better at that schedule --
18 then the tax professionals in the room probably sighed
19 and nodded their head and said, "Yeah, audits take a
20 long time"; and most of the business people who we
21 brought here had minor heart attacks.

22 And the real problem in the meeting with
23 Treasury and with IRS a couple of weeks ago was people
24 said, "Is there a" -- we've got a -- we've got a problem
25 that has suddenly caused, you know, lots of deals to

1 stop, lots of major publicly traded companies have lost
2 huge amounts of market value, horrible things have
3 happened; and they say, "Is there an expeditious process
4 to work this out so the taxpayers" -- who, again, want
5 to comply with the law and want to do the right thing --
6 "can know whether they're doing something good that
7 Congress intended for them to and that they're going to
8 get a credit for or whether they're, you know, throwing
9 money down a rat hole?"

10 But when we talk about 120 days for
11 sampling and then there's going to be some time talking
12 with the agent and then a TEAM, you know, you try to get
13 it done in 60 or 90 days, a number of people around here
14 are going to be panicking already.

15 We greatly appreciate your willingness to
16 share with us -- to examine sharing with us what
17 procedures you'd like to -- what procedures you think
18 are the proper ones so the taxpayers can try to
19 replicate those processes.

20 If there is anything that this particular
21 group can do to help avoid this crisis that leads to,
22 you know, people ambushing the Treasury secretary on the
23 Hill and things like that, it really would be to follow
24 up on that point, to have an opportunity to share with
25 us what is it you want -- what is it you would like to

1 see us doing, what are the particular things that you
2 think we're doing wrong now and that you think should be
3 done another way.

4 And I don't think those things are
5 taxpayer-specific information. I think you've now
6 looked at enough taxpayers that you have general ideas
7 and that we can talk about it.

8 And if you can share some of this
9 information with you (sic), I think most of the people
10 in this room would be delighted to come back quickly,
11 talk with you, try to work through things, so we can be
12 in the position where taxpayers can self-audit, as you
13 said, and so that we can try to comply with the law,
14 which has been our goal all along, and make sure we're
15 in a comfortable place and in that process, you know,
16 try not to notice the people who pass out when you say
17 "120 days"; but if we can do something, you know, this
18 month about the process and find some common ground,
19 that would be great.

20 If that means we need to take your experts
21 and our experts and lock them in a room for a couple of
22 days and have them talk to each other, I think everybody
23 on this side of the table would be delighted with that,
24 to contribute to that process and to try to work things
25 out.

1 We don't want you to have to burn a lot of
2 resources. We don't want us to have to burn a lot of
3 resources. We'd like to get to the bottom of this
4 quickly; and if you have any suggestions at all on other
5 mechanisms for doing that, if you'll pass them back to
6 any of 20 people in the room, we'll try to get back to
7 you as quickly as we can on that.

8 MR. SCOTT: Okay. Great.

9 MR. BERG: Well, likewise, if you have any
10 suggestions, please let us know; and, I guess, again,
11 I'd just like to sort of emphasize that the difficulty
12 we have right now in approaching this on sort of an
13 industry wide basis is that we're talking about indi --
14 verifying facts that individual taxpayers have put in
15 their private letter ruling submissions, which is
16 inherently sort of an individual taxpayer-by-taxpayer
17 process.

18 I'm not saying that it isn't inconceivable
19 we could come up with some sort of industry approach,
20 but at this time that's really how we have to approach
21 it. I think for now, the best way that I can think of
22 that we can address your comments is to try and get our
23 experts' procedures out there for you to look at and
24 comment on.

25 It's going to be harder for us at this

1 stage of the game to come forward and tell you what are
2 the typical problems we're finding, but that may be just
3 as good a way of addressing that issue is to get those
4 things to you.

5 But if you have other suggestions, keeping
6 in mind our issue that we're dealing with what
7 individual taxpayers have represented in their ruling
8 submissions, that would be great.

9 MR. WALLACE: Thank you very much.

10 Can I follow up on that for just one
11 moment, which is: We understand the concerns, the 6103
12 concerns and none of us like things under penalty that
13 ask for felonies either, but to a degree, that's why
14 we've been focusing today on procedural things, on what
15 are the right procedures, what's going on, because
16 those -- that stuff is common to most of these taxpayers
17 in the room.

18 There are a few basic procedures that the
19 majority -- the vast majority of taxpayers with private
20 letter rulings have followed; and we want to find a way
21 to deal with those, maybe on an industry wide basis --
22 well, I'm not sure you need to get into any
23 taxpayer-specific stuff. I think we can talk about them
24 intelligently; and to the degree you need to talk with
25 tax -- if you need taxpayer-specific stuff, some of us

1 represent taxpayers who will be happy to share that
2 information and talk with you however it helps.

3 MR. SCOTT: Thank you.

4 Well, are there any other questions before
5 we conclude this meeting?

6 If there aren't -- yes, ma'am.

7 I'll take yours. If you don't mind, I
8 think there was someone who preceded your --

9 UNIDENTIFIED PARTICIPANT: This is just a
10 very quick question.

11 Obviously this meeting was kind of a big
12 turning point for, you know, all of us to get together
13 with you.

14 What's sort of the next milestone in this
15 that we should look for? Are we talking now stuff
16 that's going to be on a company-by-company, individual
17 taxpayer basis or is it going to be even more granular
18 than that, on a syn-fuel-plant-by-syn-fuel-plant basis,
19 or is there any kind of next step for the IRS to -- you
20 know, or the national office or the scientists or what's
21 the next piece of information we can look for and sort
22 of timing for that next piece of information?

23 MR. SCOTT: Well, if you're asking about
24 what are the next steps, first of all, hopefully you
25 received some benefit out of this meeting. I think we

1 received some benefit.

2 There were thus far a number of
3 take-aways. I think we need to process those take-aways
4 to find out or ascertain to what extent we can be
5 responsive to some of your questions or your requests
6 and then we do that and then I think we have to complete
7 the review process. I can't tell you beyond those
8 immediate steps what else might transpire.

9 There was a question about whether or not
10 the ruling process will resume. That's yet to be
11 determined and a decision -- that decision-making
12 process is vested with someone else and so I can't speak
13 to that either.

14 But beyond the things that you requested
15 and commitment by us to look into those things and try
16 and be responsive and give you some response to some of
17 your questions that you already submitted and some of
18 the questions and take-aways from this meeting, those
19 are the only immediate next steps I can -- I can respond
20 to.

21 Yes, sir.

22 UNIDENTIFIED PARTICIPANT: Doug, I agree
23 with you that the best step would be for you to give us
24 the experts' protocol and standards they're using.

25 Do you have a timetable in mind with which

1 you could do that?

2 MR. BERG: Well, we'll be -- we'll start
3 working on that right away; and we'll have to clear
4 through channels -- I mean, I can't absolutely guarantee
5 that we'll be able to do it but we'll do -- we'll
6 certainly do our best to try and get it done but we'll
7 probably have to run that by counsel. We'll have to
8 get -- to the extent there's anything that our experts
9 might believe is proprietary -- and I have no idea if
10 there is. I'm just speculating -- we'd have to get
11 their consent, all that sort of stuff.

12 So we'll be doing it as quickly as
13 possible. That's all I can say. I mean, we'll start on
14 it today.

15 UNIDENTIFIED PARTICIPANT: Is there any
16 office that we can check to check on the progress
17 that we're making on that?

18 MR. SCOTT: Well, I think that the contact
19 point that we've given you thus far, you can channel
20 your questions and status requests through Cindy Ogden.

21 UNIDENTIFIED PARTICIPANT: Thank you.

22 MR. SCOTT: Yes, sir. You had a question.

23 UNIDENTIFIED PARTICIPANT: Can we get a
24 copy of your presentation that you had earlier?

25 MR. SCOTT: The slide presentations?

1 UNIDENTIFIED PARTICIPANT: Yes.

2 MR. BERG: We're making it avail -- it'll
3 be available also through IRS national communications
4 and liaison in Washington.

5 UNIDENTIFIED PARTICIPANT: Is that where
6 we should try to --

7 MR. BERG: Well, if you give us your
8 e-mail, we can ship it off to you ourselves.

9 UNIDENTIFIED PARTICIPANT: Okay.

10 MR. SCOTT: Again, why don't you channel

11 that request through Cindy, any specifics in terms of
12 address or e-mail or whatever.

13 UNIDENTIFIED PARTICIPANT: Very good.

14 The other question I have is: If you give
15 us the processes that your experts are using, certain
16 ASTM standards, if those standards have subjective
17 leeway, are you going to tell us what that subjectivity
18 is and how your experts view it?

19 MR. BERG: I mean, I'd be speculating; but
20 I would assume they would try and explain it as fully --
21 as fully as possible. And, you know, it might well
22 be -- you know, I can't guarantee that this won't start
23 a process where there may be questions coming back.
24 That's always possible, but we'll certainly tell them
25 that if they're make -- that whatever subjective

1 judgments they believe they're making that don't come
2 out of the standards themselves, to try and get that in
3 there so we can get them to you.

4 MR. SCOTT: Okay. Well, I hate to bring a
5 good thing to an end but some of you have airline,
6 airplane commitments and reservations and we did commit
7 to try and conclude this meeting at approximately
8 3:00 o'clock. So we're approaching 3:00 o'clock.

9 If you have one burning question that we
10 have not responded to, we will attempt to respond to
11 that one; and then I'd have to say we need to close the
12 meeting out.

13 So is there one last, final question?

14 If not, I'd like to -- I'd like to thank
15 you for coming. I hope that you realize that we are
16 going to work through this process as expeditiously as
17 we possibly can. We would also like to be as responsive
18 as we can and communicate with you as often as we can.

19 To make that possible, you need to channel
20 your questions or concerns in to us. We've tried to
21 give you a repository for those questions or concerns,
22 and I can give you my commitment that we will get back
23 to you as soon as possible.

24 You asked about the transcript. You asked
25 about copies of the slide presentations and also the

1 questions and answers that were previously advanced
2 along with those that we were in receipt of today.

3 We will communicate with you in terms of
4 how we cascade that information to you, whether it's
5 electronically or through some other means or on a
6 digital daily. If that is at all a problem, we'll give
7 you a notification about that process.

8 On that note, again, thank you very much
9 for coming; and we will bid you farewell.

10 (Proceedings concluded at 2:48 p.m.)

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1 THE STATE OF TEXAS :

2 COUNTY OF HARRIS :

3

4 I, Meredith A. Shoemaker, a Certified

5 Shorthand Reporter in and for the State of Texas, do

6 hereby certify that at the time and place stated in the

7 caption hereto that a meeting was held regarding the

8 IRC Section 29 Credit; that the proceedings of the

9 meeting were taken in machine shorthand by me and later

10 reduced to typewriting under my direction; and the

11 foregoing 89 pages constitute a true and correct

12 transcript of said meeting.

13 Given under my hand and seal of office

14 this the 22nd day of August, 2003.

15

16

17 _____
Meredith A. Shoemaker, CSR
18 Texas CSR No. 7202
Expires: 12/31/2003

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